

## REMARKS

Claims 1, 2, 4-6, 10-13 have been rejected under 35 U.S.C. §102(b) as being anticipated by Pollitt, WO 98/44033. Claims 1-8, 11-16 have been rejected under 35 U.S.C. §102(b) as being anticipated by Pollitt, GB 2,322,630. Additionally, claims 1-5, 9, 11-13 have been rejected under 35 U.S.C. §102(b) as being anticipated by Pollitt, WO 98/21159.

The Examiner's rejections are respectfully traversed.

As amended, the Applicant's invention is directed to a settable mixture comprising polybutadiene, a flow-enhancing liquid, and dry particulate matter. The dry particular matter includes no more than 2% water content and is selected to have a maximum of 2% Aluminium Oxide, and a maximum of 1% Ferrous Oxide.

It is important in the Applicant's mixture that there be a maximum of 2% aluminium oxide and a maximum of 1% of the ferrous oxide based on weight of the sand. The specific low percentages were determined by the Applicant during attempts to solve a problem of the Applicant's originally constituted product. As indicated in the previous amendment, it was found that an undesirable oily sheen was left on the paving elements with which the mixture was used for pointing after the product has been stored in vacuum-sealed bags for some four to five weeks. Additionally, the setting times for the mixture increased dramatically from two and half hours to seven or eight hours. This is particularly undesirable since the compound "cures" upon exposure to the atmosphere, and it can not be subjected to rainfall until it has cured. Thus, the longer setting time makes it more difficult to use in conditions where rain may be expected.

The Applicant recognized that the staining of the surrounding pavement may be prevented by minimizing the content of aluminium oxide and ferrous oxide in the sand mixture. Furthermore, by minimizing these two constituents, the setting time was shortened and the overall strength of the product was improved. The staining of the pavement and increased

setting times are unacceptable problems and thus the Applicant overcame the problem by using sands selected to have a maximum of 2% aluminium oxide and a maximum of 1% ferrous oxide content.

It is important to note that if one were to order a silica sand without specifying the chemical constituents thereof it is probable, if not certain, that one would receive a sand with an excessive content of aluminium oxide and possibly a ferrous oxide. As indicated on the attached sheets, the content of aluminium oxide and ferrous oxide can vary greatly. In some instances the aluminium oxide are over 2% and some show almost 10%. Thus, if one used some of these sand products, the invention would not work.

On the other hand, the three cited references do not suggest or disclose the chemical compound as defined in the claims. None of the references mention the aluminium oxide or ferrous oxide content of the particular material. The Applicant points out that there is always some of both constituents in sands. Therefore, the Applicant in the present invention is not attempting to claim a settable material in which the sand has zero aluminium oxide or ferrous oxide. Rather, the Applicant is claiming that specific limitations must be imposed on the percentages of the constituents in order to prevent staining and improve setting times and overall strength. Additionally, at the times when those references were filed, there was no knowledge of the Applicant's problem and thus, no solution to the problem.

As independent claim 1 is patently distinguishable from the prior art references, the remaining claims dependent therefrom are also patently distinguishable.

In view of the foregoing, it is believed that the amended claims and the claims dependent there from are in proper form. The Applicants respectfully contend that Pollitt, WO 98/44033, Pollitt, GB 2,322,630 and Pollitt, WO 98/21159 do not anticipate the claimed invention under the

provisions of 35 U.S.C. § 102(b). Thus, claims 1-9 and 11-13 are considered to be patently distinguishable over the prior art of record.

The application is now considered to be in condition for allowance, and an early indication of same is earnestly solicited.

Respectfully submitted,



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